

**Memorandum to the File
Case Closure**

Alleged Misuse of Time, Position, and Resources
Malcom Randall VA Medical Center, Gainesville, Florida
(2011-01783-IQ-0106)

The VA Office of Inspector General Administrative Investigations Division investigated allegations that (b) (7)(C) Malcom Randall VA Medical Center (VAMC), Gainesville, FL, misused official time from April 2010 to January 2011 by not being present at his VA post during his official VA duty hours. He instead allegedly spent the time at (b) (7)(C). We also investigated whether he satisfied his financial obligations and misused Government resources. To assess these allegations, we interviewed (b) (7)(C) (b) (7)(C); and VA and non-VA employees. We also reviewed relevant documents, personnel files, emails, Federal regulations, and VA policy.

Background

The VAMC is a tertiary care facility, an active teaching hospital, and is affiliated with (b) (7)(C). It connects both physically and functionally to (b) (7)(C). (b) (7)(C) told us that he was a full time (b) (7)(C), an (b) (7)(C) (b) (7)(C) and (b) (7)(C).

Alleged Misuse of Official Time

Federal law states that hours of employment in carrying out responsibilities under a Title 38 VA appointment of any employee appointed in the Administration under any provision of this chapter on a full time basis in a physician position, and accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period. A person covered by such may not teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title. 38 USC §§ 7423 and 7421. Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall use official time in an honest effort to perform official duties. 5 CFR § 2635.705.

VA policy states that all employees are expected to be on duty during the full period of their tours of duty unless absent on approved leave; to observe the opening and closing hours established for the tour of duty; and to adhere to established luncheon periods. VA Directive 5011/2, Paragraph 2d, (June 16, 2004). It further states that full-time physicians shall be continuously subject to call unless officially excused by proper authority. This requirement as to availability exists 24 hours per day, 7 days per week. VA Handbook 5011/2, Part I, Paragraph 3d (June 16, 2004).

Personnel records reflected that on September 28, 2008, (b) (7)(C) converted from a full time title 38 (b) (7)(C) position to a part time (0.8) appointment. Records reflected that when he began working part time, his fixed tour of duty was Monday, Wednesday, Thursday, and Friday from 7:30 a.m. to 4:00 p.m. and that he was off on Tuesday, Saturday, and Sunday. Records also reflected that on September 29, 1 day later, (b) (7)(C) accepted a part time appointment as (b) (7)(C) (b) (7)(C). (b) (7)(C) records reflected that the program was designed as a bi-annual, formal 18-month certificate program that supported selected faculty who wanted to enhance their instruction skills, evaluation of learners, and develop an educational research study. Personnel records reflected that on May 9, 2010, (b) (7)(C) returned to VA full time with a tour of duty from Monday to Friday 7:30 a.m. to 4:00 p.m.

(b) (7)(C) told us that the prior Chief of (b) (7)(C) approved (b) (7)(C) reduction in VA time to spend 1 day a week at (b) (7)(C) to develop the curriculum for the (b) (7)(C). (b) (7)(C) told us that in September 2008, he went part time, because he said that he needed nonclinical or administrative time to organize the Program. (b) (7)(C)

(b) (7)(C) told us that for the time period that (b) (7)(C) decreased his hours at VA, he was organizing the fellowship program and that once he got the course material together, he returned to VA full time.

(b) (7)(C) said that he served as (b) (7)(C) from October 2009 to January 2011, and (b) (7)(C) confirmed that (b) (7)(C) served as the (b) (7)(C) from November 2009 to January 2011. Additional VAMC staff also told us that (b) (7)(C) was (b) (7)(C) during that time period.

(b) (7)(C) told us that from May 2010 to January 2011, she recalled "grumblings" from some of the staff, in reference to (b) (7)(C) saying, "Well, he's not here, he's never here, is he over at the (b) (7)(C)?" However, (b) (7)(C) said that she was unaware of (b) (7)(C) working at (b) (7)(C) during his VA tour and that she did not recall having difficulty locating him during the workday. (b) (7)(C) (b) (7)(C) told us that a number of attending staff told him that when (b) (7)(C) was the (b) (7)(C), he left work early. He said that (b) (7)(C) might have gone to meetings, had other things to do, or stayed late the night before. (b) (7)(C) said that so long as the patients received care and the work was being done, as far as he was concerned, it sounded like standard "griping."

(b) (7)(C) said that during spring 2010, there was "speculation" amongst staff members about periods of time when (b) (7)(C) could not be reached; however, he said that (b) (7)(C) might have changed his call schedule in a way as to accommodate his (b) (7)(C) tour. (b) (7)(C) said that this seemed to be when he (b) (7)(C) was the (b) (7)(C). (b) (7)(C) told us that he never saw (b) (7)(C) at (b) (7)(C) during his VA tour of duty and that he did not have any difficulty locating (b) (7)(C) during his scheduled VA tour of duty.

(b) (7)(C) said that during the May 2010 to January 2011 period, the vast majority of Tuesdays, (b) (7)(C) did not book himself to see patients, which seemed to be the day that he went to (b) (7). (b) (7)(C) said that during this period, (b) (7)(C) left well before the completion of his VA tour of duty and reported to (b) (7) and (b) (7)(C) said he speculated that (b) (7)(C) used that time to prepare for his (b) (7) class. However, (b) (7)(C) said that he did not personally see (b) (7)(C) at (b) (7)(C) during his VA tour of duty. When asked if (b) (7)(C) may have left early to conduct VA business, (b) (7)(C) said, "You know, I just don't see how that's going to be needed to be done everyday all the time for as many hours as he was not here."

(b) (7)(C) told us that there were many Tuesdays that (b) (7)(C) was not at VA. She said that (b) (7)(C) came in early in the morning but was not seen for several hours. She said that there were times that they could not find him, and when he called back, he called from (b) (7). (b) (7)(C) said that (b) (7)(C) was not in the operating room on many midmornings and early Tuesday afternoons. She also said that there were times that (b) (7)(C) put himself on the operating room schedule, but then asked a colleague to cover for him. However, (b) (7)(C) told us that as the (b) (7)(C) could have gone to (b) (7) for a meeting or to visit the (b) (7) chairman.

(b) (7)(C) told us that he never falsely reported his VA time and attendance. He said that he understood that VA employees must be at their post of duty during their official duty hours, unless on approved leave or excused absence. He further said that the VA operating room (OR) schedule reflected that from May 2010 to December 2010 he was in the OR performing his VA duties as scheduled. He said, "I was most certainly not off campus and not conducting any (b) (7)(C) activities during those times." (b) (7)(C) told us that he did not perform his (b) (7)(C) duties during his VA tour; however, he said that there were occasions during his VA tour when he responded to emails that related to his (b) (7)(C) duties, such as responding to a student asking if there was class on a particular evening. (b) (7)(C) told us that one of his duties was being a VA educator; therefore, he did not always have to be in the OR. He said that sometimes he was at the simulator room giving a course.

(b) (7)(C) told us that there were a number of times when (b) (7)(C) was asked to go to (b) (7) during his VA tour and give a lecture on airway management, and (b) (7)(C) said that he permitted him to do so. He said that he approved it, because the lecture attendees included residents who rotated over to the VAMC. (b) (7)(C) said, "...I think that the academic mission is something that we're all supposed to support." He also said that he discussed (b) (7)(C) time and attendance with (b) (7)(C) and that (b) (7)(C) told him that as long as (b) (7)(C) worked a full day at the VAMC, what he did in the evenings was between him and (b) (7)(C).

(b) (7)(C) told us that (b) (7)(C) did not work at (b) (7) during his VA duty hours. He said, "I can also just tell you from my point of view, if you're scheduled in the OR,

you're going to be there. If you weren't there, I mean we would know about it." He also said that he did not remember ever having difficulty locating (b) (7)(C) during his scheduled VA tour and that he did not remember anyone complaining of it. When asked why VAMC staff might tell us something different, he said, "...well they don't like him, I can tell you that...he's a real hot head, a real fireball, could be kind of demeaning, which some of which I realized after I appointed him to (b) (7)(C). And so I just, I think there's a lot of jealousy there towards him."

Several other VAMC staff told us that they never had any difficulty contacting (b) (7)(C) during his VA tour of duty and that they had no knowledge of him being at (b) (7) during his VA duty hours. They also said that they were not aware of anyone else having difficulty locating (b) (7)(C) or of him misusing his time. One staff member told us that she believed that other staff members made the allegation of (b) (7)(C) misusing his time, because when he was (b) (7)(C) he was not well liked by his fellow (b) (7)(C).

Alleged Inability to Satisfy Financial Obligations

The Standards of Ethical Conduct for Employees of the Executive Branch states an employee shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes that are imposed by law. 5 CFR § 2635.101(b)(12).

(b) (7)(C) told us that he received a letter from the Internal Revenue Service (IRS) on January 10, 2011, that revealed that the income and payment information on file did not match the entries on his 2009 form 1040. (b) (7)(C) said that he immediately contacted his accountant to look into it, and as of June 6, 2011, he fully resolved the 2009 Federal tax obligation.

A Defense Finance and Accounting Service (DFAS) memo, dated July 30, 2011, reflected that there was an overpayment record generated on (b) (7)(C) pay account for pay periods ending January 29, 2011, through July 2, 2011, and that the gross amount of the overpayment was \$6,923.28. A (b) (7)(C) told us that (b) (7)(C) requested a repayment plan, the balance should be repaid within 3 years, and the current balance owed was \$6,414.16.

Alleged Misuse of Resources

(b) (7)(C) told us that in December 2009, (b) (7)(C) sent a sexually inappropriate email from his personal email account to several (b) (7) email accounts. (b) (7)(C) said that since it did not involve a VA computer, VA took no action; however, he said that he notified the VAMC Chief of Staff. (b) (7)(C) recalled the 2009 email incident and acknowledged that he sent the email from his personal laptop and his personal email account during his lunch hour. He said that the email contained pictures of nude women. (b) (7)(C) told us that sending the email showed poor judgment on his part and that he regretted it. He said that the Chief

of Staff and (b) (7)(C) reprimanded him for the incident. (b) (7)(C) told us that in December 2009 he received an email from (b) (7)(C) that contained pornographic pictures of women. He said that (b) (7)(C) sent the email from his personal computer via the (b) (7) network while at his VA duty location and that (b) (7)(C) was given a verbal counseling for sending the email. (b) (7)(C) told us that in December 2009 she gave (b) (7)(C) a verbal counseling for his sending an inappropriate email and reminded him of the appropriate use of VA and (b) (7) computers. (b) (7)(C) told us that he was aware of (b) (7)(C) sending a pornographic picture via a non-VA computer to a non-VA person in December 2009. He said that it occurred at (b) (7)(C) VA duty location and during VA time and that he (b) (7)(C) verbally counseled (b) (7)(C) on the matter.

Conclusion

We found that (b) (7)(C) did not misuse his official VA time or resources, with the exception of a few email responses related to the (b) (7) fellowship program, which we determined were *de minimis* in nature. We also found that he reduced his duty hours at VA to work part time as a (b) (7)(C) fellowship program, and he then returned to a full time VA employee when he finished with the program. Although several VA employees told us that they had difficulties locating (b) (7)(C) during his tours of duty, they generally cited his absence as being on Tuesdays when (b) (7)(C) was not scheduled to work at VA.

We found that (b) (7)(C) took a good faith effort to satisfy his financial obligations and we found no evidence that his financial considerations were a result of poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations. We also found that in December 2009 he sent a sexually inappropriate email from his personal email account to several (b) (7) email accounts. However, this matter was previously resolved by both (b) (7) and VA management by verbally counseling (b) (7)(C). We therefore are closing this investigation without issuing a formal report or memorandum.

Prepared By

(b) (7)(C)

April 27, 2012
Date

Approved By

4/30/12
Date